

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re of Application of:	LAKHOTIA, S. et al.		
Application No.:	10/019,163	Filed:	12/20/2001
Patent No:	7,553,634	Issue Date:	6/30/2009
Art Unit:	1645	Examiner:	FORD, VANESSA L.
For:	EXTRACTION OF INTEGRAL MEMBRANE PROTEINS		
Confirmation No.:	1674		
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Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

APPLICATION FOR PATENT TERM ADJUSTMENT

Patentee hereby requests reconsideration of the Patent Term Adjustment (PTA) accorded to the above-referenced patent. Reconsideration of the final PTA calculation to increase total PTA from 743 days to 1,231 days, is respectfully requested.

"A Delays" are defined as delays by the U.S. Patent and Trademark Office (USPTO) under 35 U.S.C. § 154(b)(1)(A), which guarantees prompt USPTO response. "B Delays" are defined as delays by the USPTO under 35 U.S.C. § 154(b)(1)(B), which guarantees no more than three year application pendency.

The present application was awarded 743 days of PTA based on "A Delays" which corresponds to 844 days of USPTO delay minus 101 days of Applicant delays. Patentees do not dispute the PTA with respect to "A Delays".

The present application was filed on December 20, 2001. Accordingly, under 35 U.S.C. § 154(b)(1)(B), which guarantees no more than three year application pendency, the Application should receive PTA for every day beyond December 20, 2004 in which the original application was pending, less Applicant delays and PTA days already assigned for the "A Delay" period.

Patentees filed a Request for Continued Examination (RCE) on July 6, 2006, which restarted the period allotted for “B Delays.” 35 U.S.C. § 154(b)(1)(B). Accordingly, the period between December 20, 2004 and July 6, 2006 should be considered for “B Delays.”

There were 563 days between December 20, 2004 and July 6, 2006. Of the 563 days, 66 days were Applicant delays and 9 days were already attributed in the “A Delay” period. Accordingly, Patentees should be afforded 488 days (i.e. 563 days minus 75 days) of PTA for the “B Delay” period.

To the extent that the periods of delay overlap, the period of any patent term adjustment shall not exceed the actual number of days the issuance of the patent was delayed. 35 U.S.C. § 154(b)(2)(A). As outlined in *Wyeth v. Dudas* (U.S. District Court, D.C., CA No. 07-1492, Mem. Op. September 30, 2008), the only way that these periods of time can “overlap” is if they occur on the same day.

Because 488 days of “B Delay” occurred on different calendar days from the 743 days allocated for “A Delay”, Patentees respectively submit that they should be entitled to 1,231 days of PTA.

Terminal Disclaimer

This patent is not subject to a terminal disclaimer.

CONCLUSION

In view of the foregoing, Patentees respectfully request adjustment of the PTA determination from 743 days to 1,231 days.

Patentees hereby authorize the Commissioner to charge any fees associated with this submission to **Deposit Account No. 01-1425**.

Respectfully submitted,

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